

meanors, 3 times with assault with a dangerous weapon (with 1 conviction), and had been convicted once for carrying a dangerous weapon. Subsequent to the offense referred to, he has been charged 13 times with drunkenness, twice with disorderly conduct, once with assault, once with vagrancy, and has been convicted once for assault with a dangerous weapon.

And to place this preceding case in its proper perspective for the committee, it may be worth mentioning that just 3 days prior to the offense mentioned by Mr. Shadoan, the defendant had himself reported that he was cut on the nose with a sharp instrument held in the hands of a man known to him as "Dynamite," but had subsequently refused to cooperate with the police in ascertaining the real identity of that reported assailant when our investigation produced what we thought was the probable offender. It is typical in assault cases for a complainant, in heat of anger, to identify his assailant and then later, when his temper has cooled, to refuse to cooperate in the criminal prosecution.

A second case referred to by Mr. Shadoan is that of *United States v. William Kemp*. In this case, Mr. Shadoan testified that the defendant had witnesses at home who could testify that he had been picked up by his codefendant at his home only a few minutes before his arrest. But his testimony, and that of the codefendant, was that he had left his home at about midnight, whereas the testimony and records of the department indicate that the arrest was made some 2 hours later at about 2:15 a.m.

Mr. Shadoan suggests that, to be consistent with our statements, we should have checked his alibis at the time of arrest. Again, we have a situation where the defendant is immediately connected with the proceeds of the crime, and not a case where his guilt or innocence rests on a shaky identification by a witness.

And again, not all of the facts in the case were related to the committee. Mr. Shadoan testified that "the defendant's evidence did come forward," in such fashion as to appear to imply that the trial produced alibi witnesses who cleared the defendant of guilt. On the contrary, the jury did in fact find him guilty of the offenses charged. However, the U.S. court of appeals did set aside the verdict and judgment because in its view there was insufficient evidence on which to reach a clear conclusion of guilt.

Reference was also made to the case of *United States v. Ernest Dubose*, in which it is alleged that the officer testified that the complainant picked a picture of the accused from 13 photographs, whereas the complainant testified that she had been shown only one picture.

As this case was not transcribed, we have been unable to check the accuracy of this alleged testimony. But one of the investigators in the case states that the witness was certainly shown more than one photograph and that she later positively identified the defendant in a lineup. (The principal investigator in this case has since left the department for employment with the Central Intelligence Agency and is presently out of the city; therefore, we could not obtain a statement from him for this letter.)

We must concede Mr. Chairman that, with the volume of crime we have, and with the number of policemen we have, there is a limit to the amount of investigation that can be conducted. Not always is there time or necessity to go into every detail of the defense offered by every person arrested. This is especially so in cases such as *United States v. Joseph Taylor*, where there is no question that the defendant has committed a criminal offense, and in the case of *United States v. William Kemp*, where the defendant is arrested in immediate proximity of stolen property and where the alibi offered has questionable bearing on the case.

On the other hand, our position is that additional time allowed us before arraignment does permit us to check our alibi statements given by persons arrested when their arrest is based on shaky identifications or on barely sufficient probable cause.

Since Mr. Shadoan, in his testimony, in effect stipulated that this procedure of checking is followed in some cases, no effort is being made here to enumerate examples where this has been done. We will, however, provide suitable examples to the committee if desired.

Mr. Shadoan also referred to what he characterized among some policemen as a "conviction philosophy." To support his view regarding this philosophy, he quoted two criminal cases.

The first example cited by him is *United States v. Howard W. Lee and John Thomas Lee*. In this case, he simply read a portion of the transcript of testimony between the U.S. attorney at the trial on direct examination of a witness to the robbery.